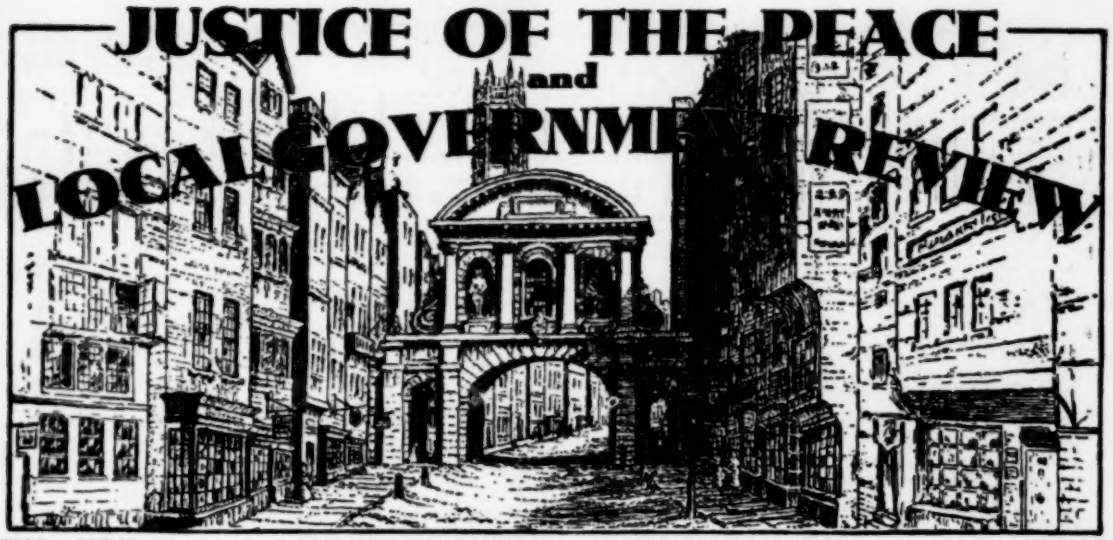

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NOTES of the WEEK

More About Straffen

Few cases in the courts have roused so much public interest and controversy as that of John Thomas Straffen. The medical press seems to have been almost unanimous in objecting to the putting of the man upon his trial, on the occasion of his murdering a child after his escape from Broadmoor. The lawyer can hardly be more satisfied with the direction of events. A large part of the unthinking public, as evidenced by letters in the newspapers and by the conversation of ordinary people in streets and public vehicles, was dissatisfied that after conviction the law was not allowed to take its course. Even thoughtful persons, who recognized the dilemma in which the Home Secretary was placed by the decision of the Court of Criminal Appeal, have been heard to say that, although a ceremonial hanging of the ordinary type may have been out of the question, it is unfortunate that Straffen (and others like him) cannot be quietly disposed of, so as to avoid keeping him in costly seclusion for a life that may last another fifty years, with the reasonable certainty that, since his crimes result from incurable infantilism, he will strangle more children whenever he escapes. It is indeed difficult to see what else the Home Secretary could have done, than advise a reprieve, since that other large and vocal section of the public which becomes sentimental about criminals would have been roused to fury if the law had taken its course. The officers of the Crown were, however, in a logically indefensible position from the start. After the first two killings of children for which Straffen was arrested last year, it was the prosecution which moved to have him committed to custody during His (then) Majesty's pleasure as being unfit to plead. As the *Medical World* sarcastically put the dilemma, it says much for Broadmoor if it is able to turn a man who was unfit to plead a few months earlier into one who knew the nature and quality of his act, both when he committed it and when he was put on trial this year. The *Economist* makes the same point but adds " what cannot have been altered was his mental infirmity : Straffen was and is a mental defective."

The fact that he was and is a mental defective is the practical reason, as distinct from a political reason, for his not being executed. There is undoubtedly a strong case on grounds of common sense for quietly getting rid of mental defectives of homicidal tendencies, but this is a matter where " common sense " of this sort will never prevail in this country, over the religious sentiment which has objected to the putting into force of such a method in other countries, or over our instinctive, native, humanitarianism. All that can be done with such persons in the English climate is to keep them in confinement. Two conclusions emerge. The one is that the places where they are confined must be made secure : in part this issue has been faced by the committee under the chairmanship of Mr. John Scott Henderson, Q.C. The other conclusion is that the whole method of dealing with mental defectives who commit crimes needs re-examination. Ordinary members of the public can hardly be expected to be satisfied with the strange tergiversations produced by the Straffen case, since it seems to them to have decided by authority that he was insane in October last ; sane in the middle of this year ; and insane again before the end of August. Lawyers have no better reason to be satisfied, and may well support the suggestion of *The Times* that the issues brought to light in this case would justify the setting up of a further Royal Commission, charged specifically with the duty of looking into insanity and mental deficiency in all its forms, in their relation to criminal proceedings of all sorts, not merely homicide.

Mr. Justice Arthian Davies

Her Majesty has signified her intention of appointing Mr. William Arthian Davies, Q.C., to be a Judge of the High Court of Justice.

Mr. Justice Arthian Davies, who is fifty-one years of age, comes of Welsh stock hailing from the county of Cardigan. Educated at Dulwich and Trinity College, Oxford, he was called to the Bar at the Inner Temple in 1925 (having secured a Certificate of Honour at the Final Examination) and took silk in 1947. Joining the Welsh Circuit he was Recorder of Merthyr Tydfil from 1947 until 1949 when he was appointed Recorder of Chester. In 1934 he received the appointment of Standing Counsel to the Ministry of Labour and a few years later he turned his attention to academic teaching when he became Assistant Reader in Common Law at the Inns of Court Law School. Both before and after taking silk the new Judge enjoyed a first class common law practice. His Lordship will, in the first instance, be attached to the Probate, Divorce and Admiralty Division in the room of Mr. Justice Havers who now goes to the Queen's Bench Division.

Sir John Wrigley, K.B.E.

The Minister of Housing and Local Government (the Rt. Hon. Harold Macmillan), mentioned at the annual conference of the Association of Municipal Corporations, to which we refer elsewhere, that he had received with very great regret the resignation of Sir John Wrigley, Joint Deputy Secretary of the Ministry, and paid a warm tribute to his great work for so many years in the various central departments concerned with housing. Sir John Wrigley was present, by invitation, at the opening

session of the conference when the president (Lord Kennet), who could speak as a former Minister of Health, told him that he had been invited to receive an expression of personal gratitude for his work in the housing field and for local government generally and for his ability, sympathy and understanding. Sir John Wrigley, in reply, expressed his appreciation for the co-operation he had always received from local authorities and their officers during the thirty years he had held a senior appointment in the government service.

Sir John Wrigley is sixty-four and entered the Local Government Board in 1912. He remained there until it was reconstituted as the Ministry of Health where he was Joint Secretary from 1943 to 1951. He went over to the Ministry of Local Government and Planning (now the Ministry of Housing and Local Government) when the housing duties of the Ministry were transferred to that Ministry. There can be no civil servant who has more friends amongst officers and members of local authorities and we are sure that his retirement will be a great loss to local government throughout the country.

Nagging as a Cruelty

King v. *King* [1952] 2 All E.R. 584 is an unhappy case, whether regarded from the point of view of the parties or the public point of view, and whether the latter be approached by the road of preserving marriage as an institution ; of avoiding waste of valuable judicial time ; or of simple common sense. Mr. King sought a divorce on the ground of his wife's cruelty, and obtained his decree from Barnard, J. Mrs. King appealed, perhaps because of the stigma attaching to being the divorced party ; perhaps because as a Roman Catholic she would not have felt herself free to marry again after the divorce, and wished to ensure that her husband should not do so either ; perhaps because relations between the spouses had become so bitter that she was determined not to let him have his wish, even though in some ways dissolution of the marriage would have been to her advantage. Whatever her motive, she appealed and won, by two to one ; Mr. King took the case to the House of Lords, where he lost by three to two. There were thus, in all, five judges for the wife and four for the husband, the four including the judge of first instance, who had heard the oral evidence and was, by his position, the most accustomed to matrimonial work, and also Somervell, L.J., who before becoming a lord justice had been President of the Probate, Divorce, and Admiralty Division. Opinion on the bench is thus seen to have been as exactly balanced as was possible. The speeches in the Lords consist largely of a recital and appraisal of the quarrels between two vulgar persons, whom their lordships said were both to blame : the things said by the spouses, according to the evidence as set out in those speeches, would furnish a modern novelist with enough material for a realistic sketch of sordid bourgeois marriage. The waste of judicial time, in analyzing and weighing all the " slanging matches " that took place, is more shocking because in the end no very conclusive guidance could be given. " The general circumstances must be considered " and " if the trial judge . . . comes to the conclusion that the wife's conduct is . . . an inexcusable offence . . . his judgment should be treated as conclusive "—yet in this case the majority of the House reversed the trial judge.

It is difficult to imagine a marriage more completely broken down than this one, and, apart from those who object to all divorce upon religious grounds, most people, we suspect, would say that in the public interest as well as the interest of the parties it would be well to let such a marriage be dissolved. The decision of the House, involving nice balances, reaching the conclusion that the parties must continue bound, is likely to drive one or both into further matrimonial offences, which might found a new petition. It is certain to encourage to further efforts those persons who desire some form of dissolution of marriage by mutual consent.

Dorset Weights and Measures Department

In his report for the year ended March 31, 1952, Mr. Roger Breed, Chief Inspector to the Dorest County Council refers to the need for vigilance in relation to exaggerated claims of some traders, in order to protect the public as far as possible from being deceived. He writes :

" This is particularly true in the field of proprietary medicines and is certainly not untrue in the field of proprietary articles of food. The decision of the Government to dispense with the very efficient advisory service, which it has operated for the guidance of food manufacturers and for the assistance of the officers of local authorities, through the Food Standards and Labelling Division of the Ministry of Food is, therefore, the more to be regretted. In this county we have seen much of the good work of that Division and we are very conscious of the fact that its advisory service has, in conjunction with the officers of food and drugs authorities, played an important part in regulating the sometimes exhorbitant and misleading claims of manufacturers of foodstuffs (and of certain medicines which laid claim to food values). This advisory work will now devolve upon some 300 separate food and drugs authorities and although decentralization is usually welcomed, by local authorities this appears to be an instance of false economy. . . . It throws a considerable additional burden on local authorities, many of whom may now find themselves in communication with the same manufacturer, on the same question, at the same time. The early re-introduction by the Ministry of Food of a ' central clearing house ' for the sole purpose of advising manufacturers of nationally marketed products will, it is suggested, not be unwelcome to most food and drugs authorities."

How the Purchaser may be Misled

The report also calls attention to what it describes as an undesirable trend in trade practice by which housewives and others are often hoodwinked. This is by manipulation of long established standards of weights and measures, and in some instances numbers. Examples given are : fewer matches per box—the average contents have been generally reduced, diminished weight of bars and tablets of soap, reduced weight of pre-packed porridge oats. Sometimes, in the case of rigid containers, the deception is made more difficult to detect by the use of bottles, jars or packs of unusual or deceptive shape. Mr. Breed considers even the Government not quite free from criticism, and he refers to the practice of packing national butter in gross weight quantities as against the earlier practice of giving net weight. This may be according to law, but Mr. Breed gives his reasons for questioning its legality, and he feels that in these days of small rations the matter is of real importance. Of course the housewife is not deceived if the word " gross " appears on the packet. He has also something to say about the continuance of the fourteen *oz.* or the twenty-eight *oz.* loaf.

Health Administration in Manchester

The annual report of the Medical Officer of Health for Manchester is contained in a volume of over 200 pages and shows the vast amount of important administrative work which

falls on the Health department of a large city. The section on the mental health service is of general interest and explains the difficulties which are arising at Manchester as elsewhere owing to the shortage of institutional accommodation—particularly for mental defectives—which is due largely to inadequate recruitment of nursing staff. It is pointed out that the local health authority is altogether in the hands of the regional hospital board so far as the allocation of hospital beds is concerned. Despite harmonious relations between officers of the health department in Manchester and the board, there have been occasions when the allocation of vacancies has operated unfairly and some of those who have not been admitted have been more deserving, in the opinion of the department, than some who have been accepted. It is suggested that it should not be left entirely to the medical superintendent to decide which patient should be selected for any vacancy. The National Health Service Act adopted the principle that one authority should be responsible for institutional treatment and the management of hospitals and that another should deal with the patient's domiciliary care. It is urged that the domiciliary authority should have a greater say in how the few vacancies that do occur in mental deficiency institutions should be filled. We suggest that this principle also applies in other types of admission to hospital such as old people. The difficulty is one of the fruits of the dual administration which has been established as we have emphasized on previous occasions.

Another aspect of the mental health service which is mentioned in the report is as to the convalescence of mental patients. It has been found that the initial problems of rehabilitation are often in no way mitigated by the patient having to return direct from hospital to an environment that may have partially contributed to his initial breakdown. It has been felt that in some cases recovery could more easily be related to the community social conditions under which a patient would live after he has been discharged from hospital were there some form of " half-way house " such as a recuperative holiday home to bridge over this difficult period between recovery and return to normal life. Many convalescent homes are, however, reluctant to receive patients who have a history of mental symptoms. Arrangements are therefore being made by the Mental After-Care Association to open a home in the North West to which suitable patients can be sent after recovery and discharge from hospital and remain until they can resume their normal life in the community. The Ministry of Health have decided that under s. 28 (1) of the National Health Service Act, 1946, it is competent for a local health authority to pay for persons received into a home administrated by the association if these persons are in need of after-care on health grounds.

National, Sectional and Personal Interests

Local authorities who may be expecting, for various reasons, that objectionable rights over land secured by Government departments during the late war will be relinquished within a terminable period seem to be facing the revival of an old hazard in a more acute form. This possibility emerges from comments in the tenth report of the House of Commons Select Committee on Estimates concerning a fighting vehicles design establishment which is due to be transferred to another site in several years' time if the findings of a public local inquiry are carried out. Misgivings of the Committee including some with regard to the sacrifice of several millions of pounds already expended on the existing establishment and more to be incurred on a substitute in a new location will be received with especial sympathy at the present time when emphasis is rightly being laid upon the need to conserve resources of materials, men and money. Therein lies the hazard, that rights surrendered in particular areas as a contribution to a national necessity of transient urgency, on the implied understanding that surrender was temporary, seem now to be in danger of permanent loss largely on the ground of financial prejudice. Experience provides substance for fear of the same hazard where the understanding was explicit, and of repetition of serious injury to the intended character of a considerable area of world-famed aesthetic merit.

The source of the difficulty lies in the developed, and still developing, ability of sections of society here and abroad to organize the tolerably unresistant mass from remote centres of power. An inevitable result is that rights and enjoyments of people in limited areas or as individuals tend to be over-run by a vast administrative machine. Attempts, partly spontaneous and partly impelled by alarmed public opinion, have been fairly successful in this country in curbing the exercise of power in a manner which was sometimes despotic more from lack of realization than from unashamed ruthlessness or the exhilaration of conceit at the possession of power. Nevertheless, few would deny that there are times of grave crisis when a government would fail in its then primary purpose of ensuring national survival by any means available without immediate fuss over hindrances represented by local and personal rights. When calmer, if not untroubled, conditions are reached, thought is required on such remedies as may be expedient for injuries perpetrated during a period of pressing emergency. Restoration of property rights, privileges or amenities will be practicable in many cases, less easy but possible in others, and extremely difficult in a residuum where environmental circumstances have so altered that restoration would have a seriously detrimental effect in affairs of wide public importance.

The more frequent the intervention of governments becomes in local and private affairs, a process likely to increase rather than diminish, and the morale of a nation being dependent to a substantial degree upon the maintenance of faith, quality and efficiency in its principles and practice of public administration, questions appertaining to breaches of express or implied undertakings given by, extracted from, or imposed upon governmental bodies assume a high degree of significance. In this country, Parliament is the ultimate tribunal in matters of national interest and its record is resplendent with endeavours to provide machinery for the adjustment of relationships between the nation as a whole and its local and personal components where these are affected by projects essential to effectuation of national policy. Plentiful channels exist for objections, representations and appeals to arbitral bodies and ministerial quarters, supplemented by opportunities for recourse to the courts on the interpretation of statute law, and possibilities of evoking Parliamentary discussion. Sometimes governmental departments and bodies appear to be possessed of singularly sweeping powers and at others to be hampered by the want of sufficient, which may result, on the one hand, in undue zeal and severity in the pursuit of a desirable purpose, and, on the other hand, in inadequate action. Parliament would occasionally be relieved from fierce and disturbing backwash, existing arbitral bodies deputed to handle specific problems would not need to fumble with broad questions beyond their ambit, and local organizations and individuals would derive a greater measure of satisfaction by the establishment of a national policy consultative council, comprising representatives of a wide diversity of interests including local authorities, who would examine, partly through reports from local assessors, cases in which national versus sectional or personal issues were involved, and make recommendations, at least, of the lines on which particular conflicts should be determined.

WHAT IS A BROTHEL?

The Statutory law on brothel-keeping is contained in the Criminal Law Amendment Acts of 1885 (s. 13), 1912, (s. 4), and 1922 (s. 3). The first-mentioned enactment makes it an offence (*a*) for anyone to keep, manage, or act, or assist in the management of a brothel; and (*b*) for the tenants, lessee, or occupier, or person in charge of any premises, knowingly to permit such premises or any part thereof to be used as a brothel or for the purposes of habitual prostitution. While a cursory glance at these sections may yield little cause for query, close examination shows that doubts may well be raised on the meanings of "brothel", "premises", and "prostitution". Such has indeed been the case. There are reported several cases in which a strict interpretation of the words quoted has been at conflict with what many regard as broad common sense. From the review of the leading authorities it will be apparent that the High Court has consistently taken a broad, as opposed to a pedantic view, of the difficulties raised. But the very number of these cases shows that the difficulties are genuine. As nearly every criminal court sooner or later has to deal with charges brought under the sections in question, it is certainly worth while to consider the effect of High Court rulings upon their interpretation. It is within the present writer's experience that at least one of these cases is not as well-known as its importance demands.

The dictionaries, in defining "prostitution," always associate the ideas of sexual promiscuity and commercial gain. But the High Court interprets the word more widely. This is clear from the case of *Winter* v. *Woolfe* (1931) 95 J.P. 20. In this case the evidence disclosed the use of a public dance room for lewd and indecent purposes by persons of both sexes. The female parties to these practices were not convicted prostitutes, and the occupier of the hall, who was the defendant, was not alleged to have received any remuneration for the use of her premises for immoral purposes over and above the legitimate charge she made for admission to dances. The magistrates had held that the facts did not disclose the use of the premises for the purposes of habitual prostitution.

Upon this, Avory, J., said "In my opinion the magistrates here have given too restricted a meaning to the words "brothel" and "prostitution" as used in this section. It is not disputed that they have dismissed the information on the ground that there was no evidence that the women resorting to the premises were known to the police as prostitutes, and no evidence that they were resorting to the premises for fornication and receiving payment therefor. There was evidence before them from which the necessary inference was that a number of women were resorting to the premises habitually for the purpose of fornication with men who resorted there." Swift, J., said that as there was evidence which, if uncontradicted, would have amounted to keeping a bawdy house at Common Law, there was ground for the justices finding that the premises were used as a brothel.

In this case Avory, J., referred with approval to the case of *R.* v. *Justices of Parts of Holland, Lincolnshire*, (1882) 46 J.P. 312. In this case a room in a public house was alleged to have been used on one occasion only by two prostitutes who arrived at the premises with two men. The licensee was not present at the time, but he was eventually defendant to a charge of permitting the premises to be used as a brothel, and was duly convicted by the justices. Upon the defendant's appeal by case stated, Grove, J., said: "I don't think the matter of nuisance is of any importance, for it is too well known that these places are often kept in such a way as to be no nuisance at all, but kept perfectly private. But what needs only to be proved is this, namely, that the premises were kept for the purpose of people having illicit sexual connexion there." The magistrates' conviction was upheld. This case shows that the protracted observation by the police which is generally a feature of the evidence in such prosecutions is not always necessary. Courts are often wearied with details of six or seven days' happenings. Two or three days might suffice, even one, on this authority, though more evidence is no doubt desirable in most cases.

Section 13 (2) of the statute of 1885 uses the term "habitual prostitution." We have already seen from the case of *Winter* (*supra*) that evidence need not be called to prove specific payments for acts of immorality, though the general understanding of "prostitution" always imparts the idea of a commercial transaction. The law goes further still. The case of *R.* v. *de Munck* (1918) 82 J.P. 160, is authority for saying that natural sexual connexion is not necessary in the establishment of prostitution. In this case the defendant was charged with procuring a girl to become a common prostitute. Evidence showed that she was still a virgin, but that the defendant had allowed her, for gain, to expose herself to men. Giving judgment, Darling, J., put the matter in a form easily remembered in these words: "We are of opinion that prostitution is proved if it be shown that a woman offers her body commonly for lewdness for payment in return."

There remain for consideration two cases which help courts to decide the difficult question of the meaning of "premises" in the Statute.

In the case of *Singleton* v. *Ellison* (1895) 59 J.P. 119, a woman used premises in her own occupation for the purpose of prostitution with men by herself alone. The High Court held that such user did not constitute the offence of keeping a brothel. Wills, J., said: "A brothel means the same thing as a bawdy house. It is a place to which persons of both sexes are allowed to resort for purposes of prostitution."

In *Durose* v. *Wilson* (1907) 71 J.P. 263, the appellant was employed by the owner as the porter in charge of a block of flats, among whose tenants were twelve prostitutes who brought men to the premises. He knew the purpose for which the women used their flats and was convicted of being wilfully a party to the continued use of the premises or part thereof as a brothel. The question for the Court was whether *Singleton* v. *Ellison*, *supra*, availed the defendant. Was it not tenable that each woman used her individual flat for the reception of her customers, but that this did not constitute the entire block a brothel? The judgments of the Court make it clear that if such could be strictly proved then a good defence might indeed be established. But it is unlikely that such could happen from external observation. As it was Lord Alverstone, C.J., said: "The appellant did not know to what flat the couples went, but after midnight he let them in at the street door, and when they left he called cabs for them and received tips from the men . . . This is not the case of the individual immoral person, but the case of a person who . . . may be convicted if he has been wilfully a party to this use of the premises."

Charges under the statute are very frequent in the larger towns. As we have seen, popular definition of the terms in issue does not always square with legal interpretation. The cases above outlined should serve to settle some of the problems which arise in these unsavoury but inescapable cases.

DRAINS, SEWERS AND ROOF WATER

The Public Health Act, 1936, did much to cure the defects which, over generations, had grown up in the law of drains and sewers. But it did not solve all problems, as our Practical Points show from time to time. In particular, whilst clearing the position in most matters where local authorities have a direct concern, it left a good deal of scope for *vicina jurgia* where the rights of private persons are alone involved. The owners and occupiers of property rarely tamper with drains carrying offensive waste, for obvious reasons, but the disposal of comparatively pure rain water from roofs is a not infrequent cause of discussion between neighbours, and what may start as a private quarrel will often in the end become the concern of the local authority. Broadly speaking " drains " are the responsibility of private owners but " public sewers " of the local authority. The difficulty is that it is often obscure whether a conduit (to use a neutral expression) is a drain or a sewer, for the expressions are terms of art. Even when this is decided, there are exceptions to the general principle. The sort of case where disputes arise is where the roof water from a pair or a group of houses, possibly terrace houses, falls into a what is here described as a collecting conduit, running along the frontage of the houses, and that conduit in turn is connected to what is indisputably a public sewer, by way of a conduit running through one of the properties. An un-neighbourly neighbour who plans some new construction on his land, or who possibly merely wishes to be awkward, blocks up the collecting conduit. What are the rights and duties of the various persons and the local authority concerned ?

Under s. 36 of the Public Health Act, 1936, the owner of a house is obliged to make satisfactory provision for drainage, including the drainage of roof water, and under s. 34 he is entitled to have his drains and private sewers (which are distinguished from public sewers below) made to communicate with the public sewers. The expression " drain " is defined in s. 343 (1) as a drain used for the drainage of one building or of any buildings or yards appurtenant to buildings within the same curtilage, the expression " sewer " as a sewer or drain, other than a drain as so defined, used for the drainage of buildings, and yards appurtenant to buildings. Whether or not a particular conduit is a drain or a sewer therefore depends on whether or not it serves only buildings within the same curtilage, and this is a question of fact to be determined in each case according to the mode in which and the purpose for which they were built and their present use : *Pilbrow* v. *Vestry of St. Leonard, Shoreditch* (1895) 59 J.P. 68. Normally, however, a drain is that which receives the drainage of one house, while a sewer is that which receives the drainage of two or more. A conduit ceases to be a drain and becomes a sewer at the point where it receives the drainage of the second house (*Beckenham U.D.C.* v. *Wood* (1896) 60 J.P. 490), whether or not there is any change in its physical construction. Thus a collecting conduit serving houses A, B and C, which is connected to the main public sewer system through property C, will be a drain on property A, continue as such on property B up to the point where it takes the water from house B, and will thereafter and on property C be a sewer.

Suppose B stops up the conduit above the point where it becomes a sewer ; this action can only give rise in the first place to a private dispute between A and B, for the conduit is not a sewer and *a fortiori* not a public sewer for which the local authority are responsible. In the vast majority of cases A will enjoy an easement over property B and can insist on the unblocking of the conduit. Suppose however he fails to secure this, either because he takes no action or because he lacks the legal right, it would then appear that there was no adequate provision for drainage and the local authority might serve a notice on A, under s. 39 of the Act of 1936, requiring the making of such provision.

Whether or not similar considerations would apply if the conduit were blocked below the point where it becomes a sewer would depend on whether it were a private sewer or a public sewer vested in the local authority. If it was constructed before the coming into operation of the Act of 1936 on October 1, 1937, it would (subject to what is said below about combined drains) have vested in the local authority under s. 19 of the Public Health Act, 1875, unless it was made for profit. (The other two exceptions to s. 19 could scarcely be relevant). It would be absurd to say that every sewer is made for profit, for the reason that it enhances the selling or rental value of the property it serves and in *Ferrand* v. *Hallas Land and Building Co.* (1893) 57 J.P. 692 it was held that a sewer made by a landlord for the sole purpose of draining houses erected by him on his own land is not made by him " for his own profit " within the meaning of the exception. While in each case it is a question of fact whether the sewer was made for profit, in the case of a sewer serving residential property the exception rarely has any application. A sewer vested in the local authority under the Act of 1875 is a public sewer and continues to vest in the authority under s. 20 of the Act of 1936. For the sake of completeness it must be added that the operation of s. 19 of the Act of 1875 was in certain areas modified by local Acts which provided for combined drains serving groups of houses, and ordered them to be drains and not sewers for the purposes of that Act ; s. 20 (1) (*a*) of the Act of 1936 provides that these combined drains shall be public sewers vested in the local authority if they would have been so vested but for the local Act provisions. Sewers constructed by the local authority at their expense or acquired by them are public sewers regardless of the date of construction or of acquisition unless they have been constructed since October 1, 1937, to serve the authority's own property and have not been declared public sewers. Sewers privately constructed since October 1, 1937, are not public sewers unless and until they have been adopted by the local authority under s. 17 of the Act of 1936. (It should be noticed that the map the local authority is obliged to keep for public inspection under s. 32 need not show public sewers vested in the local authority before October 1, 1937, unless they are reserved for foul water or surface water.) A sewer constructed before October 1, 1937, will, therefore, except in rare cases, be a public sewer, while one constructed after that date will very often be a private sewer. The local authority does not merely enjoy an easement but owns a public sewer, and it is their duty under s. 23 of the Act of 1936 to maintain it. In *Birkenhead Corporation* v. *London and North Western Railway* (1886) 50 J.P. 84 it was held that where there is a statutory duty to keep a sewer in repair there is by implication a right of access to carry out necessary repairs. Assuming that the sewer in the hypothetical case under consideration is a public one, it would therefore be the right and duty of the local authority to enter the property and unblock it.

In certain circumstances the local authority has a right under s. 24 of the Act of 1936 to recover expenditure incurred in maintaining part of a public sewer. The section only applies in two cases, first to lengths of sewer constructed before October 1, 1937, which were combined drains and so not sewers for the purposes of the Act of 1875 or were single private drains. These were sewers in respect of which the local authority was relieved

of the obligation of maintenance by virtue of the adoption of s. 19 of the Public Health Acts Amendment Act, 1890, or of a local Act. Secondly it applies where the length of sewer was vested in the local authority before October 1, 1937, but was not constructed at their expense, provided that it lies wholly in the property or properties it serves or else in a road or other means of access to any of those properties, which is not a highway repairable by the inhabitants at large. To recover the cost of maintenance under this section, notices must be served in advance on the owners of the properties served by the length of sewer, and recovery may be made from them in such proportions as the authority think fit, considering *inter alia* the responsibility for any act or default which rendered the work necessary. If the section applied in the hypothetical case put forward, the local authority would presumably recover the entire cost from the owner who blocked the collecting conduit.

THE ANNUAL REPORT OF THE NATIONAL ASSISTANCE BOARD

The work of the National Assistance Board continues to increase even although, as might be expected, only a small proportion of the persons assisted are in need owing to unemployment, totalling about 55,000 at any time during last year. The number of persons receiving assistance at the end of the year was 1,460,000, an increase of 100,000 over the previous year. Omitting applications directed only to obtaining a grant for dentures or spectacles—new work to the Board—the number of applications for assistance was about 2,690,000 or three *per cent.* less than in 1950. In 320,000 cases no assistance was granted, 1,530,000 were dealt with by a single payment to meet a temporary situation, and 840,000 resulted in the grant of a weekly allowance. Old or sick persons account for 83.9 *per cent.* of the allowances paid by the Board.

Any person assisted on account of unemployment is required to register at an employment exchange as if he were claiming unemployment benefit. It is of course disquieting that any person who is able-bodied should be dependent on public funds under the conditions of abundant employment which obtain in most parts of the country. In some cases, although it has not been possible to place a man directly in employment he has consented to go to a re-establishment centre which has been established by the Board as an experiment, to accustom to regular occupation men who have had no regular work for some time ; and to get to understand the man, and win his confidence and stimulate pride in himself and his interest in things about him.

LIABILITY OF RELATIONS

One of the most difficult tasks of the Board's officers is to enforce the liability of husbands and fathers to support wives and children to whom assistance has to be paid. If he can be traced the Board's officers may try to get him to make a voluntary contribution. Sometimes their intervention and the efforts of the probation officers and others leads to reconciliation between husband and wife. If proceedings in court seem necessary, the Board's officers usually advise and help the woman to take them herself, reserving for the exceptional case the Board's own powers to take proceedings to obtain a maintenance or affiliation order. Where the man has persistently refused or neglected to meet his liabilities the Board may take criminal proceedings against him under s. 51 of the National Assistance Act. Reference is made in the report to the action which may be taken under the National Assistance (Adaptation of Enactments) Regulations, 1951, to obtain repayment of assistance granted to the dependants of a merchant seaman. Turning again to legal proceedings, it is pointed out that, where necessary, the Board provide legal representation in matrimonial cases where the woman is unable to put her own case effectively. Two hundred and ten women were assisted in this way. The Board took proceedings themselves in forty-two cases under ss. 43 and 44 of the National Assistance Act.

PERSONS WITHOUT A SETTLED WAY OF LIVING

It is satisfactory to learn from the report that the average number of persons accommodated at reception centres (or casual wards as they were called under the Poor Law) is lower than in each of the past three years. The number of centres was reduced from 164 to 143 and one new centre was opened in Kent. The running costs of this centre in relation to the number of casuals using it give the Board much concern and as indicated in the report " demonstrate in a striking way the heavy cost of providing reception centre accommodation for small numbers otherwise than in association with another establishment whose staff and services it can share." It is unfortunate that the taxpayers should have been put to this additional expense but it is understandable that local authorities, and especially hospital authorities where an old casual ward is still being used at a former poor law institution, should press for their closure. It is to be hoped, however, that the costly experiment of opening this separate centre will make the Board cautious about opening any other new centres and that the local authorities—and even if necessary the hospital authority in the case of a joint user establishment—will be willing in these times of financial stringency, to continue the inconvenience of having centres still attached to some of their institutions.

The main object of the reception centre scheme is not the mere provision of temporary accommodation—as under the poor law system—but to get those using the centres back into a normal working life. Those responsible for the centres must frequently be discouraged but the fact that during the year 11,067 persons in the centres were placed in employment shows the constructive effort that is being made, with the help of officials of co-operative local authorities, hospital authorities, and the Ministry of Labour, to persuade users of the centres to lead a useful life. But there are some flagrant cases and the small number of successful prosecutions which were instituted during the year probably acted as a deterrent in other cases. On the brighter side, however, several cases are quoted in detail where the perseverance of the officials had good results in getting the men to abandon a life of vagrancy.

Other sections of the report deal with the assistance given to persons to meet national health services charges for dentures and spectacles ; and the action taken during trade disputes and legal aid. The Board co-operate with the Law Society in administering parts of the Legal Aid and Advice Act, 1949, as also in Scotland. No separate figures are given in the report but it is interesting to learn that from the coming into operation of the scheme on October 2, 1950, until December 31, 1951, 75,771 applications were received by the Board's officers through the Committees of the Law Societies in both countries, 3,063 applications were withdrawn and of the cases dealt with up to the end of the year thirty-five *per cent.* were found to be entitled on financial grounds to free legal aid, sixty-two *per cent.* to aid subject to payment of a contribution and only three *per cent.* to be outside the financial limits of the scheme.

THE REVIEW OF THE EXCHEQUER EQUALIZATION GRANTS

In March last the Minister of Housing and Local Government announced in Parliament that it had become clear that the rating revaluation could not be completed by April, 1953, and that new legislation would be introduced giving power to postpone the date, his aim now being to finish by April, 1956. In view of this the Government would begin (in 1952/53) an investigation into the operation of the equalization grants.

Subsequent statements made by the Minister indicated that the Government would not contemplate changing the system in any way which would increase the burden of grants on the Exchequer, that they would not recommend any repeal of the present provisions relating to the derating of industrial freight-transport and agricultural hereditaments, and that amendment would be required to the provisions of the Local Government Act, 1948, relating to the assessment of dwelling-houses although it was intended that the basis should still be pre-war value.

Under these inauspicious limitations the review is gathering way. The Government sits back in a comfortable arena seat to watch the entry and battles of the gladiators. If some of the contestants suffer severe disabling wounds, or even extinction, no blame can be put upon the Government, who have merely provided a battleground but have not compelled anyone to struggle there.

We consider local authorities will be ill advised indeed if they embark upon such an internecine combat. It is understandable that those authorities who received less favourable treatment in 1948 now look hopefully to the present review to retrieve their position, but it would be folly to seek an improvement of their fortunes by despoiling other authorities. Nor do the figures prove that it is necessary, as is shown by these examples (taken from the report of the Society of County Treasurers upon the Exchequer Equalization Grant) :

County.	*Equalization Grant Percentage.*	*Estimated equivalent rate in the £ of all local rates levied in the Administrative County.*	
		1947/48	1949/50
1	2	3	4
	%	*s. d.*	*s. d.*
Cardigan	66.79	26 6	21 7
Montgomery	63.77	22 2	19 7
Merioneth	59.69	21 7	21 4
Pembroke	57.44	23 3	22 0
Carmarthen	57.21	24 9	18 11
Ely, Isle of	53.52	23 1	17 4
Lincoln, Holland	53.32	22 5	19 7
Wight, Isle of	Nil	18 5	18 4
Kent	Nil	17 9	18 10
Hertford	Nil	19 8	19 11
Middlesex	Nil	18 4	16 9
West Sussex	Nil	15 3	16 5
East Sussex	Nil	14 0	15 4
Surrey	Nil	15 7	16 6

Here, in terms of equalization grant receipts we have the highest and the lowest counties, and in general those counties receiving most grant still have the highest rates. It may be argued that figures of rates levied are not a good test. Nevertheless, they are the best we have, subject to correct valuation of properties, which is, of course, vital. The Society state in their report : " There is evidence, however limited it may be, that there are at present greatly differing levels of valuation up and down the country, which are not wholly explained by differences in rental values." No further information is given and in its absence we have consulted the paper entitled " The Problem of Valuation for Rating " by Mr. and Mrs. Hicks and C. E. V. Leser, and reproduce the following table :

*Levels of Assessment—Comparisons between Areas

	Level of Assessment (all houses)	*Percentage of post-war houses*	*Levels of assessment*	
			Pre-war houses separately	*Post-war houses separately*
London Ring	62	56	67	59
Manchester area	79	30	86	69
Black Country	65	44	72	59
Merseyside	74	37	80	66
Tyneside	81	35	88	73
South Wales	80	19	85	67
Sussex Coast	69	48	73	66
Fens	70	27	77	59
Marches	74	22	86	56
London County	81–4	13	82–6	69

* Level of assessment means the percentage of nominal rateable value to true rateable value.

If these figures represent the undervaluation at present existing and consequently the distortion of the equalization grant our readers can quickly envisage the approximate re-distribution of the grant when re-valuation is effected. It is sufficient at the moment to say that the wealthier areas have little to hope for, as the Paper emphasizes in another table which we reproduce :

Areas compared by Relative Wealth

	Index of rateable value per house		*Level of assessment*		*Relative under-assessment of post-war houses*
	True	*Nominal*	*Pre-war houses*	*Post-war houses*	
Sussex Coast	159	164	73	66	90
London Ring	148	137	67	59	88
London County	130–126	157	82–6	69	84–80
Merseyside	93	102	80	66	82
Black Country	69	67	72	59	82
Tyneside	65	78	88	73	83
Manchester area	64	75	86	69	80
South Wales	50	59	85	67	79
Marches	50	55	86	56	65
Fens	42	43	77	59	77

(The war is that of 1914–18).

The conclusions of the authors were :

(1) When all houses are taken together, the poorer areas usually appear the less undervalued.

(2) This is largely, but by no means wholly, due to the fact that the poorer areas contain a smaller percentage of post-war houses.

(3) The pre-war houses, taken by themselves, are more undervalued in expanding areas ; this generally means in richer areas.

(4) The gap between the valuations of pre- and post-war houses appears to be narrower in the richer areas.

The Society of County Treasurers state that they have assumed that the purpose of the Exchequer Equalization Grant is to produce a substantial measure of equalization of rates in the pound based upon uniformity of valuation and that the Society is convinced that the concept of the grant is fundamentally sound. They add that as the grant has been distributed now

for four years upon the basis of the old valuation lists, and if there is to be further long delay before the new system of valuation is completed, an investigation may be necessary to see whether any substantial injustices are being done, and to provide for their immediate correction. Having expressed these views we rather hoped that the Society might have particularized injustices caused by inequalities of valuation and proposed remedies. On their premise that the concept of the grant is sound such a course seems logical and inevitable, but it has not been followed, possibly because the requisite data is not available. Instead the Society confine themselves largely to recommendations about expenditure.

They criticize the weighting of population as insufficient properly to reflect necessarily differing levels of expenditure in different areas; plead for additional grants for areas containing new towns or receiving population overspill, and for higher highway grants for sparsely populated areas; and call attention to the fact that no authority whose rateable value per head of weighted population is in excess of the national average receives a grant although the resources of these areas vary considerably.

We are inclined to agree that grant arrangements in respect of certain kinds of local authority expenditure are worthy of review, but think that if need is proved it should be met by *ad hoc* subventions, not by attempted adjustments of a general grant whose object is to supplement below average rateable resources. We agree that those authorities who receive no equalization grant are not equal between themselves and that there may be ground for considering, and possibly ameliorating, relative disadvantages. This should not be done, however, at the expense of those authorities with less than average rateable value per head.

Our opinions about the review are therefore these. First, we hope that local authorities will not regard the review as an opportunity to devise a new formula and thus secure a redistribution of grant between themselves. Strife between local authorities should be avoided. Secondly, we agree with the Society of County Treasurers that the concept of the equalization grant is fundamentally sound. If there are injustices due to differing levels of present valuations these should be investigated and remedial action taken to cover the interim period pending the new valuation coming into operation. The Inland Revenue should make public the considerable body of information about valuations which they must by now have collected, and give those interested the opportunity to judge for themselves how far the various allegations and rumours now in circulation are based on fact. Thirdly, abnormal expenditure in particular areas should receive grant, if warranted, as a special contribution directed to the particular service in question. There should be no adjustment of the general equalization grant for this cause. Fourthly, local authorities should press for the abolition of derating of agricultural and industrial hereditaments. This would increase rateable values by some £60 millions and do much to assist the restoration of local financial independence.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 82.

THE PERILS OF ARMY LIFE

A retired major appeared at Lincoln Magistrates' Court recently, to answer three informations laid by the wife of a captain in the army at present serving overseas. The charges alleged, first, that defendant had maliciously wounded the five year old son of the prosecutrix, contrary to s. 20 of the Offences against the Person Act, 1861; secondly, that he had unlawfully assaulted the boy, thereby occasioning him actual bodily harm, contrary to s. 47 of the same Act; and thirdly, that he had maliciously wounded a dog, the property of the prosecutrix contrary to s. 41 of the Malicious Damage Act, 1861.

The offences were alleged to have been committed earlier this year at a barracks in which defendant and prosecutrix were then both residing.

During the hearing, the second charge was amended by striking out the words "contrary to s. 47 of the Offences against the Person Act, 1861," as the defence took the point that s. 47 did not create the offence and merely laid down the punishment.

The defendant consented to summary trial on the first two charges, and did not elect to go for trial by jury on the third charge. He pleaded not guilty to all charges.

For the prosecution, evidence was given that on the material date the prosecutrix's son went out on his tricycle accompanied by her three year old alsatian dog. The dog and the child arrived at the garden in front of the defendant's house where he kept chicken. The dog entered the garden through a gap in the wire fence which surrounded it, and started to chase the chicken. The defendant heard a commotion, looked out of the window, and saw the dog with a chicken in its mouth. He saw the dog drop the chicken, which flew away, and he at once obtained a double barrelled twelve bore shotgun and several cartridges, loaded the gun and went outside. He then found that the dog was outside his fence going down a road in the barracks; he walked after the dog and the little boy at a distance of about twenty-five yards, and after they turned the corner, two shots were heard in quick succession. Shortly afterwards, prosecutrix saw her son and the dog approaching, the boy was bleeding from his ear and the dog was wounded in both feet. The boy had apparently been hit by a pellet. Shortly afterwards the defendant came to the prosecutrix's house, said he was sorry and that he had lost his temper and shot at the dog. He was apparently, at that time unaware that the boy had been injured.

Defendant had been interviewed by the police and an R.S.P.C.A. inspector, and had said that the dog had turned on him, growling and snarling in a very menacing way, and that he had shot low to frighten it, and that the second shot must have hit it. Defendant had said that he recollected seeing the boy some forty to fifty yards beyond the dog but he did not fire in line with the boy; the only reason he could give for the boy being struck was that a pellet might have ricochetted off the road.

There were no eye-witnesses of the actual shooting except the boy, aged five. He was called as a witness for the prosecution, and gave his evidence unsworn.

The defendant giving evidence said that he had fired the first shot when the dog was about fifteen yards away and the second when about ten yards from him. He said he had no doubt that had he not taken some action he would have been mauled by the dog. He said that he saw the boy in the distance when he fired but he did not fire in line with him and there was no danger of his being hit. He said that he did not lose his temper and denied ever having said so to witnesses.

For the prosecution, it was pointed out that the explanation that the dog had attacked him had not been put forward by the defendant immediately after the incident, and that his statement to witnesses immediately afterwards that he had lost his temper was more likely to be the true one; that in any event the dog was not actually attacking him and that he was not justified in shooting it; with regard to the child's injury, although it was not suggested that the defendant had deliberately shot at the child, it was contended that he had acted recklessly and must have appreciated the danger of the child being hit by a ricochet, and that he must be taken to have intended the natural consequences of this act.

For the defence, it was contended that the defendant was justified in firing at the dog, which he said he thought was going to attack him, and that he took all reasonable precautions to avoid endangering the child.

The bench dismissed the first two summonses for wounding and assaulting the boy; the defendant was convicted on the third summons for maliciously wounding the dog and was fined £20 and £15 15*s.* costs.

COMMENT

Section 20 of the Offences Against the Person Act, 1861, provided for a maximum penalty of three years' penal servitude or two years' hard labour, but by s. 1 of the Penal Servitude Act, 1891, power was given for the maximum penalty to be increased to five years penal servitude. It will be recalled that there is power for a defendant charged with an offence under s. 20 to be convicted of common assault.

It is interesting to observe the distinction made by Parliament in

1861 between the killing or maiming of cattle and the killing or maiming of other animals for, whereas an offender found guilty of the former offence was liable to fourteen years' penal servitude, a person guilty of maliciously killing or wounding any dog, bird, beast or other animal, not being cattle, was liable on a first conviction to six months' imprisonment, and upon a second conviction to twelve months' imprisonment.

R.L.H.

No. 83.

A NOVEL DEFENCE

At Bradford Magistrates' Court on August 15 last, a man was summoned to answer an information that he had used a motor vehicle not fitted with an instrument so constructed as at all times to indicate readily to the driver of the vehicle if and when he was driving at a speed in excess of thirty miles an hour, contrary to reg. 12 of the Motor Vehicles (Construction and Use) Regulations, 1951.

After evidence for the prosecution had been given it was urged on behalf of the defendant who pleaded not guilty to the charge that the vehicle which he was driving was fitted with a revolution counter, *i.e.*, an instrument which counted the number of revolutions per minute being performed by the crankshaft of the engine, and that it was readily possible for a knowledgeable driver such as defendant, to see immediately if and when he was driving at a speed of thirty miles per hour.

The prosecutor, Mr. B. A. Payton, solicitor, of Bradford, to whom the writer is indebted for this report, submitted that this argument failed in two respects : (1) that the driver would be obliged to consider first in which gear the car was engaged before making the appropriate calculation of speed and (2) that on certain occasions, *i.e.*, when " coasting " or during the process of changing gear, the reading of the revolution counter would bear no relation whatever to the speed of the vehicle. Thus, such an instrument neither " readily indicated " the speed, nor did it " at all times " indicate the speed of the vehicle.

The bench, the chairman of which was a director of a large motor manufacturing company, after careful consideration held that a revolution counter did not comply with the above regulation and defendant was convicted and fined 10*s*.

R.L.H.

PENALTIES

Pontardawe—August, 1952—(1) stealing a lorry value £200, (2) driving while disqualified, (3) no insurance, (4) malicious damage to a garage to the extent of £40. (1) six months' imprisonment, (2) six months' imprisonment (consecutive), (3) three months' (concurrent), (4) three months' (concurrent), disqualified from driving for five years.

Barnsley—August, 1952—stealing a total of £489 from his employers (five charges)—six months' imprisonment. Defendant, a cashier, left his employment abruptly and it was found that for ten weeks he had failed to stamp workmen's insurance cards involving £391. There were also other deficiencies.

Bristol—August, 1952—being in possession of two illicitly slaughtered sheep—fined £5. To pay £2 2*s*. costs. Defendant, a butcher, said that he had over-spent his allocation because ninety *per cent.* of one week's supply was fat pork and mutton.

Bristol—September, 1952—(1) embezzling £5 4*s*. 6*d*. (2) embezzling £1 14*s*. 3*d*.—fined a total of £15. Defendant, a shop manager, pleaded that his books got into a terrible mess last Christmas owing to pressure of work. He asked for forty-two separate sums of money totalling £10 to be taken into account.

West Bromwich—September, 1952—obtaining £12 and £46 by false pretences (two charges)—one month's imprisonment each charge (concurrent). Defendant, a sixty-three year old widow, was stated to have nowhere to go as her only daughter would have nothing further to do with her. In 1951 defendant was put on probation for twelve months at another court on three charges of false pretences.

Bridgwater—September, 1952—attempting to evade customs duty on 4,000 cigarettes—fined £35. Defendant, a twenty-one year old Dutchman and the second engineer of a motor vessel, concealed the cigarettes in a compressor cylinder in the engine room.

Deddington—September, 1952—failing to pay National Insurance contributions as a self-employed person—fined £2. Defendant had not stamped his cards since 1949 but after proceedings had been instituted he paid the arrears totalling £41.

Williton—September, 1952—driving a car with defective brakes—fined £5. Defendant, a woman dealer, said that while her brakes were being tested she lost confidence because a policeman was sitting beside her.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

MARKETS

I was very interested in the article entitled " Some Points Concerning Markets " at p. 508, *ante*. There are, however, two points on which I venture to disagree with the writer. The first of these concerns the statement that in the case of a charter market there is usually no power vested in the market authority to make byelaws regulating the use of the market and the conduct of persons resorting thereto. Section 56 of the Food and Drugs Act, 1938, expressly provides that any local authority who maintain a market, whether they are a market authority within the meaning of that expression as used in the Act or not, may make byelaws for (*inter alia*) regulating the use of the market. The second point arises from the statement that a toll can strictly be levied only on the buyer and that, if the charter conferring the right to toll is silent as to the amount, the toll may not now be increased except by express statutory authority. It is true that toll in the more limited sense is a sum payable by the buyer, but by custom or statute dues in the nature of tolls and commonly known as such may be payable upon goods brought into a market for sale, whether sold or not. (*See* 22 *Halsbury* 79).

With regard to the amount of a toll, I have always understood that if no amount is specified in the charter then the amount can be varied from time to time by the owners of the market franchise, provided always that the toll is a reasonable one. This view is supported at p. 80 of the same volume of *Halsbury*.

It may be, of course, that the writer was using the word " toll " in its strictest sense but in that event I would suggest that some reference should have been made to those charges which are paid by the seller on goods exposed for sale and which are commonly referred to in markets of local authorities throughout the country as tolls.

May I finally add that the article itself was very welcome, reviewing as it did the law relating to a subject which is the concern of many local authorities but to which there is often very little reference in the recognized local government journals and text-books.

Yours faithfully,
C. L. HOFFROCK GRIFFITHS,
Town Clerk.

Municipal Buildings,
Boston,
Lincs.

[Our contributor writes :

I must admit an error on the first point raised by the town clerk of Boston. By some strange aberration I failed to notice that s. 56 of the Food and Drugs Act, 1938, applies to all local authorities, and not only to " market authorities."

With regard to the second point, that tolls are leviable only on buyers of goods, I think I made it clear towards the end of the first paragraph of 6 (*a*) that I was here referring to tolls *stricto sensu*, and, whereas the town clerk's observation is correct, I would submit that my observation also is correct : namely that most authorities at the present day rely for their market income on stallages and pickages.

As to the amount of a toll, the point I wanted to make was that if this were a fixed amount under the charter or by custom, it could not now be increased except by statutory authority ; naturally, if the charter (or custom) provides that the toll shall be a reasonable (unspecified) amount, it may be varied from time to time. I am sorry about the first point, especially in my first article, but I could not cover everything so far as the others are concerned.]

BOOKS AND PAPERS RECEIVED

Automony and Delegation in County Government. By Emmeline W. Cohen. London : Institute of Public Administration. Price 6*s*.

Antibiotics—A Survey of their Properties and Uses. London ; The Pharmaceutical Press, 17, Bloomsbury Square, W.C.1. Price 25*s*., postage 10*d*.

The first edition of this work was published in 1946 under the title " Penicillin : It's Properties, Uses and Preparations." This new edition deals also with other antibiotics discovered since that time. It includes a chapter which deals with the legal aspects of antibiotics.

NEW COMMISSIONS

ANDOVER BOROUGH

Miss Elvie Madge Cooper, 4, Cross Lane, Andover.

BURY ST. EDMUNDS BOROUGH

Miss Ella Joyce Cockram, 17, Northgate Street, Bury St. Edmunds.
Henry Lacy Scott, Old Walls, Bury St. Edmunds.

GREAT YARMOUTH BOROUGH

David Winter Child Bellamy, 136, King Street, Gt. Yarmouth.
Arthur William Ecclestone, Middle Cross, North Drive, Gt. Yarmouth.
Horace Edward Sewell, 50, Lancaster Road, Gt. Yarmouth.

HASTINGS BOROUGH

Mrs. Alice Nan Hefferan, 7, Park Mansions, Chapel Park Road, St. Leonards.
Dr. Philip Dunbar Johnson, Harrow Mill, Baldslow, Sussex.
Stanley Frederick Lelliott, 12, Churchill Avenue, Hastings.
Miss Kathleen Mozley, 47, Linton Road, Hastings.
Harold George Payne, Courtlands, Westfield Lane, St. Leonards.

MIDDLESBROUGH BOROUGH

Frank Burr, 128, Durham Road, Stockton-on-Tees.
James Lawrence Harris, 12, Mayberry Grove, Linthorpe, Middlesbrough.
Bevan Pumphrey, 121, Green Lane, Linthorpe, Middlesbrough.
Mrs. Anne Thompson, 17, Grassington Road, Beechwood, Middlesbrough.

PERSONALIA

APPOINTMENT

Mr. W. O. Haslam, borough treasurer of Kidderminster, has been appointed rating officer in succession to Mr. J. E. Grove who is retiring after having been connected with the rating department for more than forty years. This will mean the merging of the treasurer's and rating departments.

NOTICES

The next court of quarter sessions for the Isle of Ely will be held at Ely on October 1, 1952.

The next court of quarter sessions for the borough of Guildford will be held on October 4, 1952, at the Guildhall at 11 *a.m.*

The next court of quarter sessions for the borough of Bridgwater will be held on Friday, October 24, 1952, at the Court House, Northgate, Bridgwater, at 10.30 *a.m.*

WESTMINSTER CATHEDRAL

A Votive Mass of the Holy Ghost (The Red Mass) will be celebrated on Wednesday, October 1, 1952. (The opening of the Michaelmas Law Term) at 11.30 *a.m.*, in the presence of His Eminence Cardinal Griffin, Archbishop of Westminster; Celebrant, the Rt. Reverend Monsignor Charles L. H. Duchemin.

Counsel will robe in the Chapter Room at the Cathedral. The seats behind Counsel will be reserved for Solicitors.

Will those desirous of attending please inform the Hon. Secretary, Society of our Lady of Good Counsel, 6, Maiden Lane, W.C.2., so that an adequate number of seats may be reserved.

REVIEWS

Hart's Introduction to the Law of Local Government and Administration. Fifth Edition. By William O. Hart. London: Butterworth & Co. (Publishers) Ltd. Price 38s. 6d. net.

This work (styled an "Introduction") has now been running for eighteen years and has reached a fifth edition, proof enough of its utility to law tutors, either at the Universities or in the legal profession. The present edition, like the fourth, is edited by Mr. W. O. Hart, who was formerly a fellow and tutor at Oxford and in London and was associated with his father (the late Town Clerk of Sheffield) in the first and second editions. This combination of academic knowledge and practical experience has proved useful, in preparing an Introduction which tells students as much as they need to know of local government for examination purposes, and also fits them for acquiring the more advanced information, upon the administrative side of local government, which they will require if they take up local government as a profession. The early chapters are particularly valuable; indeed chapter I (which is specifically called the "Introduction") is possibly the best brief account for students of the beginning of local government in England. From this, Part I of the work proceeds to a general explanation of the nature of different local authorities and their areas, and then to the alteration of areas, and an explanation of the representative system. These four chapters constitute roughly the first half of Part I, and may be regarded as a general exposition of what local government is. The remainder of Part I, comprising seven more chapters (one of which relates exclusively to the metropolis), is devoted to the practical working of local government and the administration of justice. It may perhaps be questioned why the administration of justice is brought into a book expressed to deal with local government. The explanation is historical, as readers will find in the first (or introductory) chapter of the book, which shows how local government as known today sprang from the work of the justices of the peace, while the tenth chapter aims at showing how the administration of justice and local government administration are linked today.

The second part of the book, entitled Central Control over Local Authorities, falls into seven chapters, one of which is entitled Local Authorities in Litigation. It is perhaps logical (though it seems unusual) to treat litigation as a mode of central control; it can no doubt be argued that the courts which look after litigation are in essence part of the State machinery.

Part III relates to particular local government services and contains ten chapters dealing with specific matters. One of these is "trading undertakings," which are dealt with rather summarily; no doubt the treatment of these, which form only one part of the business of local authorities, would have assumed exaggerated importance if the treatment had been fuller.

The chapter entitled "licensing" in this part of the book may be considered partly out of place, since it contains a good deal of matter on the subject of liquor licences, and other paragraphs dealing with public service vehicles (neither of which is a local government service, though the licensing of public service vehicles was such a service until 1930). This is, however, a matter of opinion, and all forms of local licensing have to be studied by the law pupil who aims at qualifying for local government work. The book, so far as we have yet been able to test it, is reliable in detail, and it should be commended to senior local government officials who have the responsibility for educating juniors, and also to solicitors in private practice whose articled pupils have included any aspect of local government in their studies.

Trial of William Palmer. Edited by George H. Knott, Barrister-at-Law. Third Edition revised by Eric R. Watson, Barrister-at-Law. London: William Hodge & Co., Ltd., 86 Hatton Garden, E.C.1. Price 15s.

The fact that this volume in the Notable British Trial Series has run to a third edition indicates the continued interest of the public in the notorious poisoner. That great judge and jurist Sir James Stephen, who was present at the trial in 1856, stated long afterwards his considered opinion that it was one of the greatest trials in the history of English law. Palmer was tried before three judges, Lord Campbell, C.J., Cresswell, J. and Alderson, B., and the array of distinguished counsel included Cockburn, the Attorney-General, Edwin James, Bodkin, Welsby, Huddleston, Serjeant Shea, Grove, Gray and Kenealy.

Palmer was thought to have poisoned Cook and several other victims, by means of strychnia, although no traces of it were found in the body, and there was considerable conflict of medical and chemical evidence. The editor states in his introduction that Sir James Stephen suggested that Palmer may have discovered a method of administering strychnia so as to disguise its normal effects, and if so, says the editor, his secret has never been disclosed. Palmer had been a medical practitioner, and there was plenty of evidence of his having obtained poisons and of his various ministrations to Cook during his attacks of illness. It is curious also to note Palmer's statement: "I am innocent of poisoning Cook by strychnia." The one thing about which few people seem to have been in doubt was that at all events Palmer poisoned Cook by some means.

Whillans's Tax Tables 1952-53. By George Whillans. London: Butterworth & Co. (Publishers) Ltd. Price 5s. post free.

We have now for several years in succession had the satisfaction of calling attention to *Whillans's Tax Tables*; the main features of the charts which are included will be familiar to the finance departments of local authorities, and others who have to deal with taxation matters. The most apposite comment may be by adapting Goldsmith: Still we gaze and still the wonder grows, that these few charts can set out all he knows. There is nothing relating to the rates of tax which is not to be found in these twelve pages; and the author has found room to include several matters which are only on the fringe, such as the allowances for uniform to members of the forces, and the registration

fees for companies. National Insurance contributions are given, as taking effect in 1952, and there is a full list of double taxation agreements showing which are still in draft.

Surtax rates are given from 1937 onwards, together with the " special contribution " for the year 1947-48. The main feature of the chart is, necessarily, that which gives the rates of tax for all incomes up to £2,000, but this is only one of the many useful features.

The grossing-up chart will be useful to many taxpayers who prepare their own returns, and there is even a calculator for the tax year 1952-53 showing how many days have still to run at each particular point of time. The single copies are cheap at 5*s*., and reduced rates are available for quantities more than six and more than twenty-five, so that as many copies as are needed, for use in any office which is concerned with taxation matters, can be procured.

RECENT CHANGES IN HIGHWAY LAW

The last three years have seen several statutory changes in highway law of considerable interest, and it is proposed to consider these in the light of practical experience of their working, rather than to explain their legal implications in detail.

1. NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949

At first thought, it is not obvious that this statute has any real bearing on highway law, but s. 47 of the Act re-states and makes clear a very important principle of the common law affecting the repair of those highways which are only footpaths or bridleways. The section commences by reminding its readers of the common law rule that a highway is, as a matter of general principle, repairable by the inhabitants at large. This re-statement of an ancient rule was necessary because it had almost been forgotten by practising lawyers and administrators, owing to the provisions of s. 23 of the Highway Act, 1835, to the effect that a road dedicated after that Act had come into force should not be regarded as being repairable by the inhabitants at large, unless certain stringent conditions were observed (in practice, these virtually mean that the local highway authority must approve the condition of the highway before they can be held responsible for its repair). This exception to the common law principles does not normally, however, apply to highways other than roads, and the present section therefore goes on virtually to provide that s. 23 of the 1835 Act should not apply to those highways, and that, notwithstanding any liability to repair of any private person (and it is still possible, in certain circumstances for a private person to be responsible for the repair of a highway), the local highway authority shall be responsible for the repair of all public paths within their district. A " public path " is defined in s. 27 (6) of the Act as meaning any highway, being either a footpath (*i.e.*, a highway over which the public have a right of way on foot only, other than such a highway at the side of a public road) or a bridleway (*i.e.*, a highway over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway).

The duty to keep a footpath in repair is enforceable against the inhabitants of the particular parish by a prosecution of the inhabitants (collectively) on indictment, or alternatively the local justices may fine the offending highway authority under the Highway Acts, 1835 and 1862 ; also, in the case of a non-county borough or urban district highway authority, the appropriate county council may order the authority to repair their highways, and may act themselves in default, at the expense of the highway authority : Highways and Locomotives (Amendment) Act, 1878, s. 10. The standard of repair which can be insisted upon by these means was at one time considered to be merely the maintenance of the surface as it had been at its best ; the better view now seems to be, however, that the duty of the highway authority is to keep the highway in a state fit to accommodate the persons or animals which may reasonably be expected to pass along it (*see Public Rights of Way*, by Dow and Edwards, at p. 147). In practice, therefore, the standard of repair of the usual public path will not be very high—in most country or only partially urbanized areas, maintenance need amount to little more than the trimming back of overgrown hedges, the keeping of stiles in repair, and the occasional filling in of the worst potholes. In urban areas, the standard will normally be higher, but in these cases the responsibility for repair of the highway authority has been more generally accepted, under the pressure of public opinion, for some years before the passing of the 1949 Act.

Quite apart, however, from the other provisions of the Act dealing with footpaths—the survey, and the provisions whereby existing footpaths may be preserved and new ones created, subjects which are too complicated and specialized to be considered here—it is suggested that those authorities who have not already done so, should review the condition of all footpaths in their district, with a view to ascertaining the extent of their obligations under s. 47 of the Act.

2. PUBLIC UTILITIES STREET WORKS ACT, 1950

This is one of the most complicated statutes that has been placed on the statute book in recent years, and it is certainly not the intention of the present writer to discuss its provisions in detail. Briefly, the main purpose of the Act may be described as being an endeavour to restrict the number of occasions on which it may prove necessary to open the surface of a street for the purpose of executing of works by one or more of the public utility undertakings (gas, water, electricity, sewers, telephones, and a few specialized concerns in some areas). Whenever one of these undertakings propose to open a road, since the coming into force of the Act, they must submit plans and sections showing their proposals, to the highway authority for approval, and all other undertakings with apparatus or works in the road in question must be given an opportunity of commenting on the proposals and, where this can be arranged, executing any works of their own at the same time—similarly whenever a road authority propose to carry out major works to the road surface, etc., they must notify their proposals to all utility undertakings having apparatus or works in the road in in question, and once those works have been completed, it will not normally be permissible for a public authority to break up the surface of that road again for a period of twelve months thereafter.

Unfortunately, it was necessary to insert so many provisos and exceptions to the general principles of the Act that those principles do not always work out in practice—to the motorist, the greatest nuisance and danger from faulty reinstatement of a road surface is most frequently the result of an opening which had been necessitated by the provisions of a service pipe for water, gas or electricity, etc.; but the opening of a road for a service pipe is an exception to most of the provisions of the Act. Perhaps most importantly, the Act is so complicated that it is not always adequately understood by the technical staffs responsible for its administration, and the rights of a particular authority or undertaking may be prejudiced by the oversight of some procedural step which should have been taken in a limited time. A glance at the law stationers' lists of forms offered for use under the Act will prove the considerable extent

of the paper-work made for busy office staffs by the passing of the Act, and at times one is compelled to wonder whether the "red-tape" does in fact achieve as good results as were in most districts obtained before the Act by ordinary co-operation and goodwill between the local officials of the various public bodies concerned. It is perhaps at present too early to decide positively whether the Act has achieved its main purpose, but it is clear that it has given all those concerned much to think about!

Perhaps the most welcome provisions are those relating to private streets and to "controlled land" respectively. By declaring a particular private street to be a "prospectively maintainable highway," the highway authority may obtain some degree of control over the standard of reinstatement carried out by a public utility undertaking in such a street—in the past, utility undertakings would not always take the same trouble in effecting reinstatements in a private street, partly because the surface was probably generally of a low standard, and partly because the standard of reinstatement was the concern of no other authority; in consequence, the surface of a private street gradually became worse by reason of poor reinstatements, until eventually the highway authority would be obliged to make up the street. Since the coming into operation of the Act, the alert highway authority should be able in some measure to prevent such a state of affairs.

"Controlled land" is used in the Act to mean land lying between the boundary of the street and an improvement line prescribed under the Public Health Act, 1925, or land which has been purchased, or is in the course of acquisition, by the highway authority for road purposes, and which abuts on the street. Where there is such controlled land at the side of the street, the highway authority may require a utility undertaking to place their apparatus, pipes, cables, etc., in this land, instead of under the surface of the street itself, thereby avoiding the necessity of opening the surface of the highway.

3. HIGHWAYS (PROVISION OF CATTLE-GRIDS) ACT, 1950

This is a comparatively brief and simple statute, dealing with an isolated but none the less important matter. Its provisions enable a local highway authority to provide a cattle-grid in a highway, together with any necessary by-pass and gates. The authority are empowered to acquire land for the purpose, to expend money for the purpose, and to enter into agreements with landowners for the use of land for the purposes of the Act. The measure is of particular importance in areas where cattle are allowed to wander at large at the sides of unfenced roads, such as in the New Forest.

4. NEW STREETS ACT, 1951

This measure was first introduced into the House of Commons by a private member, but was then adopted as a Government measure, and became law on October 1, 1951. The Act applies only to boroughs and urban districts, and to those rural districts to which it may have been extended by order made by the Minister of Housing and Local Government on the application of the county council concerned; to date the Act has been so applied only to the Isle of Wight R.D.C., and to the rural districts in Anglesey and in Flintshire. A detailed consideration of the Act was printed in this *Review* for May 17, 1952, at p. 307; here it is only proposed to consider its general principles and a few of the criticisms that have been made of the Act since it came into force.

The effect of this statute may be summarized as follows: (*a*) When plans are submitted for the construction of a building in a private street, the owner shall be required to deposit with, or secure to the satisfaction of, the local highway authority the provisional estimate, apportioned to his frontage, of the cost of making up the street to the satisfaction of the highway authority under the Private Street Works Act, 1892, or other corresponding legislation in force in the district;

(*b*) The majority of frontagers to a private street are empowered to require the local highway authority to make up the street under the appropriate private street works legislation, and to adopt the street as a highway repairable by the inhabitants at large, when it has been so made up (*see* s. 6).

At the present day, the second of these two provisions is virtually unworkable in practice, for except in the very worst cases (and then permission will be granted only on public health grounds), the restrictions on capital expenditure are such that the Minister of Housing and Local Government will refuse to grant the necessary licence under Defence Regulation 56A to enable the execution of private street works. Inability to obtain a licence is made an effective answer to action taken by the frontagers under s. 6 and it seems doubtful therefore whether the section has yet been used against any highway authority.

The first provision, contained in ss. 1 and 2 of the Act, is, however, very much alive, and these sections are causing considerable practical and legal difficulties to local highway authorities, especially as, with the relaxation in the restrictions on private building, the extent of private development is increasing. Every time a plan is submitted for the erection of a building—that cannot be exempted from the provisions of the Act—in a fresh private street, the local authority's staff must, within a month, prepare a provisional apportionment of the cost of carrying out private street works in that street. Fortunately, the exemptions from the operation of the Act are many; in certain circumstances, a particular building (and it should be noted that the applicability or otherwise of a particular exemption must be considered with reference to each building individually) may be exempted automatically—*e.g.*, where the plans for the building were submitted prior to the commencement of the Act—and in other circumstances, a particular building may be granted a certificate of exemption if the highway authority are satisfied as to certain matters—*e.g.*, that the street was at the commencement of the Act "substantially built-up." These exemptions are so widely drawn that the traditional "coach and pair" can be driven through them, and it is the proud boast of the advisers to several large boroughs that their Councils have not yet operated the Act in a single case!

Where there is no escape from the Act, however, not only do these provisions cause grave administrative difficulties to the local authority, but also they may well put a severe financial burden on the private builder or developer. Capital is not readily come by at the present day, and the need to find a further £200 or £300, in addition to the development charge, may well effectually prevent the development from being carried out at all. Several authorities have already suggested the repeal of the Act *in toto*, and the substitution of a measure similar to that contained in a Birmingham Corporation Act, which requires a builder who has covenanted with his purchaser to defray the road charges subsequently to be apportioned on the house, to pay or secure that sum to the satisfaction of the highway authority. It has also been suggested that cl. 24 of the Model Clauses for Local Acts, which prohibits the erection of any building on land abutting on the street until the carriageway thereof has been constructed, and the street has been sewered, would most effectually meet the mischiefs at which the 1951 Act seems to have been aimed—namely, the hardship caused to frontagers by having to meet unexpected private street works expenses.

Whether or not these suggestions are adopted, it is sincerely to be hoped that this very new statute will not be allowed long to remain on the statute book in its present very unsatisfactory form.

J.F.G.

PHONEY TALES

During the past fifty years or so the telephone has become an indispensable adjunct to civilized life. Providing a direct and (in theory) instantaneous means of oral communication between persons at a distance, it is invaluable for conveying and receiving information on a thousand and one domestic, social, professional and commercial topics; it is an absolute necessity, in peace and war, for statesmen, political administrators, and the armed forces and police. It is superior to the telegraph system in enabling parties separated by hundreds, or even thousands, of miles to exchange question and answer as easily as if they sat facing each other in the same room. Yet in this very ease lie its inconveniences and burdens. There are those—particularly of the female sex—for whom the propinquity of a telephone constitutes an irresistible stimulus to garrulity, a facile means of unburdening themselves of a load of gossip without regard to the convenience, interest or acquiescence of their correspondent. Such voluble persons can be a very menace to domestic peace or studious concentration. The chatty letter, after a cursory glance, can be set aside to await a seasonable occasion for perusal and reply; but the shrill ringing of the telephone bell is an importunate summons that brooks no delay:

> "O noisy bell, be dumb:
> I hear you: I will come"

wrote A. E. Housman (albeit in another connexion), and come we must, though ignorant, until we lift the receiver, whether the caller is a business associate with pressing matters to discuss, or only dear Aunt Jane who thinks the time is ripe for one of her nice long chats. The only alternatives before the harassed subscriber are to surround himself beforehand, if he has the means to do so, with a protective bodyguard of intermediaries, or at the moment of crisis to improvise the excuse that he has just emerged, dripping wet, from his bath, or one of a number of other more or less convincing lies, of varying shades of whiteness, which he keeps stored in his subconscious mind against such emergencies. For the telephone, in its present state of development, mercifully remains the medium of aural communication only; we have not yet reached the stage where, as is foreseen by Shaw in *Back to Methuselah*, the apparatus will enable the caller to see as well as hear his distant correspondent. When that time comes somebody will have to invent a Cap of Invisibility (after the fashion of the *Tarnhelm* used by Siegfried in *The Ring*) or some other device for rendering the subscriber invisible, at will, on the first imperious summons of the bell.

Mention of the Cap of Invisibility brings us to a news-item from Vienna, the beautiful City that was once the capital of a great Empire, and long famous for its gaiety, its music and its art. Despite its present incommodious situation on the borderland between East and West, where it is a focus of conflicting ideologies and a centre of occupation by the armed forces of alien Powers, it is pleasant to read of a revival there of that spirit of charm and fantasy that was so marked a feature of Viennese life in the refined days of Maria Theresa and Joseph II. A new service has been introduced on the Viennese telephone system. By dialling an exchange number, says the report, young subscribers, for the price of an ordinary call, can now hear fairy-tales over the wire. The new service has already proved so popular that the special lines were inundated with callers during the first week-end, and their number is being increased from fifty to a hundred.

Here is a new use for the telephone which can bring nothing but delight into the lives of children whose receptive minds will be "conditioned" to look upon the instrument as a magic key to those

> "Charm'd fairy casements, opening on the foam
> Of perilous seas, in fairylands forlorn."

In the mind of the adult subscriber imaginative fantasy in the activities of the British Post Office is limited to the contents of the half-yearly bills rendered by the Telephone Accounts Department; and the romantic attraction of remote place-names is apt to pall when they are mentioned in connexion with forgotten, or fictitious, trunk-calls costing fabulous sums. Now all this is to be changed. The persistence of the "engaged" signal for three-quarters of an hour on end will leave the would-be caller, who wishes to ascertain whether his friend will be in for tea, to picture the wide-eyed little innocent, at the other end of the wire, revelling in the breath-taking adventures of Jack the Giant-Killer and Puss-in-Boots, repeated *da capo* (for children love nothing so much as repetition) in continuous succession. The traveller who has just remembered the urgent message he had to send at precisely 11.45 *a.m.* can watch with vicarious enjoyment, as he stands in teeming rain outside the occupied telephone-booth, the little people snug and dry inside, spending a seemingly inexhaustible store of pennies in listening to the dramatic events in the lives of Sinbad the Sailor and Tom Thumb. All of which will, no doubt, afford edifying consolation as a balm to unreasonable impatience.

The only danger of employing the applied science of acoustics to serve the receptive minds of children will lie in their uncanny flair for putting two and two together and asking awkward questions. Once the fairy-tale becomes associated in their busy brains with the telephone-apparatus, will they not inevitably credit their favourite heroes and heroines of legend with the possession of identical facilities, and with the means of exploiting those other inventions and institutions to which they are themselves accustomed in their daily lives? Fresh catechisms will descend upon the weary heads of devoted parents and others like a flood. "Daddy, why didn't Beauty ring up her father to tell him the Beast was a Prince after all?" "Mummy, tell me; why didn't Bluebeard's wife dial 999 when she saw the bodies in the Forbidden Room?" "Why didn't Ali Baba put a Yale lock on the Thieves' Cave?" "Couldn't Aladdin have plugged in his lamp instead of rubbing it?" "Didn't Hansel and Gretel have to give up all their sweet-coupons when they ate the chocolate walls of the Gingerbread House?" "If Red Riding Hood mistook the Wolf for her grandmother, oughtn't she to have had her eyes tested at school for glasses?" "Nannie, why didn't Cinderella get out the vacuum cleaner when they told her to sweep up the kitchen?" And so on, and so forth. The initiators of the Viennese experiment are kindly and enlightened men and women, but they might have been wiser to consult one of the child-pyschologists, for whom their City is famous, before putting it into effect.

A.L.P.

CAUTIONARY TALE

He was prone
To confuse clients' money with his own,
But found that if you don't keep them as apart as Poles
You won't remain on the Rolls.

J.P.C.

EPITAPH

Here lies one whose estate was nil—
Nobody knows why he made a will.

J.P.C.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Coal Industry Nationalization Act, 1946—*Transfer of Property—Contract.*

A land owner in a lease of mining rights under his land granted to a coal company the right for the same term of years to take sand from certain land in his ownership. Later the land owner sold the land from which sand was to be taken subject to the lease previously granted. Under the Coal Industry Nationalization Act, 1946, the National Coal Board claimed that they were entitled to the benefit of this right to take sand. On behalf of the present owner of the servient tenement it was argued that as the coal company was still in existence it was doubtful whether the right to take sand passed under the Coal Industry Nationalization Act to the National Coal Board, but the National Coal Board have contended that the right to do so was passed by virtue of s. 7 of and sch. 2 to that Act. During the period of the argument the National Coal Board did not take sand from the land in question although no physical obstruction was ever offered by the owner of the servient tenement. The National Coal Board now contend that the denial of their right to take sand during the period of the argument justifies them in a claim for damages based on the amount of money spent in buying sand elsewhere during such period.

Your opinion on the following points would be appreciated:

(*a*) Whether the right to take sand under the lease to the coal company passed under the Coal Industry Nationalization Act, 1946, to the National Coal Board, and

(*b*) Whether the mere denial of the right without recourse to any physical interference with the taking of the sand justifies the Coal Board in their claim for damages? P.E.W.C.

Answer.

(*a*) There appear to be grounds for the contention of the Board that the contract passed to them under s. 7 of the Act of 1946, but there is insufficient information on which to express a definite view.

(*b*) It is not clear how long the dispute has continued. The Coal Board have apparently accepted the contention of the present owner and have delayed putting the matter to the test. There appears to have been no wrongful act by the owner on which a claim for damages could be founded. The Coal Board have, and all along have had, their remedy, *viz.*, by entering (thus raising the issue) or by taking formal steps to assert their rights.

2.—Criminal law—*Larceny—Fish caught in baulk on foreshore.*

I shall be obliged if you can advise me in the following: One, B, a fisherman, owns a baulk or fixed engine for taking fish, which baulk is situate on the foreshore, and is covered at high tide. When the tide recedes, fish are trapped in the baulk, which consists of an arrangement of stakes and nets, and are collected by the fisherman. The baulk has been fished in this manner for a great many years. I may say at this stage that the baulk is situate some distance from the land and is only accessible after a long walk over the sands. Of late the fisherman in question has been troubled by persons going out to the baulk and taking fish therefrom, and also damaging the baulk stakes and nets. I have read s. 24 of the Larceny Act, 1861, but am rather inclined to the view that this does not cover the question of illegally taking fish from what cannot be deemed private water. Possibly a person could be charged with larceny of the fish caught in the baulk, just as a person may be charged with larceny of fish caught by means of trawler fishing and stored in the hold of a vessel. I shall be glad to have your opinion. SIA.

Answer.

We can find no authority on this point, but on general principles and in the light of the decisions relating to larceny of animals, birds and fish, we incline to the view that the fish in this case have not been reduced into the possession of B so as to make the taking by others amount to larceny. Apparently, there may be evidence of malicious damage to the stakes and nets which could be the subject of a prosecution.

3.—Food and Drugs—*Sale of Food (Weights and Measures) Act, 1926—Misrepresentation or act calculated to deceive—Meat sold without statement as to weight at excess price.*

Section 39 of the Sale of Food (Weights and Measures) Act, 1926, provides as follows:

"A person shall not on or in connexion with the sale of any article of food, or in exposing or offering any article of food for sale, make any misrepresentation either by word of mouth or otherwise, or commit any other act calculated to mislead the purchaser or prospective purchaser, as to the weight or measure of the article, or, if any articles are being sold or offered for sale by number, as to the number of articles sold or offered for sale."

I shall be pleased to have your views on whether the following facts would justify a conviction for an infringement of the section:

(*a*) A butcher sells to a purchaser in his shop, meat, for which a maximum price is laid down, at a price in excess of the permitted maximum. The meat is not weighed in the presence of the purchaser, who can, therefore, be presumed to be misled as to the weight of meat expected, because the price stated, when applied to the maximum retail price list, would cause the purchaser to expect a quantity of meat which even at the most expensive, would be in excess of that he actually receives. Apparently such an act could be, in the words of the section, either a "misrepresentation" or an "act calculated to mislead."

(*b*) The butcher, instead of selling in the shop, makes up a parcel of meat for delivery to a prospective purchaser and writes the price on the wrapper; again, the price is in excess of the maximum and no weight is stated. These facts are discovered before there has been a delivery. There is not, on the authority of *Preston* v. *Coventry and District Co-operative Society Limited* (1946) 110 J.P. 174, a "misrepresentation" here but possibly there is an "act calculated to mislead." SURA.

Answer.

(*a*) If a person who is entitled to a meat ration of X shillings worth is charged X shillings for his ration he may reasonably assume that this is a ration of such a weight as to be worth X shillings at the lawful price. Therefore we consider there is ground for a charge of misrepresentation.

(*b*) This is less certain, but in view of the observations of Humphreys, J, in the case cited we incline to the view that if the justices are satisfied that the parcel was intended for delivery to the customer and that the charge was excessive for the weight they can properly find the offence proved.

4.—Housing Act, 1936—*Agricultural Holdings Act*, 1948.

My council is purchasing land by agreement for the purposes of Part V of the Housing Act, 1936. The land is at present subject to a yearly agricultural tenancy, and some doubt has been expressed whether fourteen days' notice of entry can be served on the tenant under s. 145 (2) of the Housing Act, 1936. I shall be obliged to have your opinion on the following points:

1. Can notice under s. 145 (2) of the Housing Act, 1936, be served after the purchase of the land has been completed, or must this be served after the contract is signed but before completion takes place?

2. Do ss. 23 and 24 of the Agricultural Holdings Act, 1948, affect the powers given by s. 145 (2) Housing Act, 1936.

3. Planning permission has been obtained for the use of this land for housing; should this fact be stated in the notice of entry. PLADE.

Answer.

1. The notice may be served at any time after the agreement to purchase has been made; *see* s. 145 (2) of the Housing Act, 1936.

2. No. The agreement operates as if the land had been purchased compulsorily and the tenant will be compensated under s. 121 of the Lands Clauses Act, 1845.

3. It may be stated but need not be so stated. Such a statement is only relevant for the purposes of ss. 23 and 24 of the Agricultural Holdings Act, 1948.

5.—Husband and Wife—*Maintenance order—Parties resume residence together—Effect on order as to costs.*

We recently were successful in obtaining an order under the Separation and Maintenance Acts in favour of a wife and her two children. The court also awarded to the wife an advocate's fee of £4 4*s.* and the expenses of her witnesses (there were six witnesses in all).

After the husband had made two payments his wife returned to him and will soon have been with him for three months. The payments which he made were paid by the justices' clerk to the National Assistance Board and the clerk takes the view that the whole order is now unenforceable including the award of costs and expenses.

We can see the force of this argument, but it seems extremely unfair to the witnesses, not to mention ourselves, and we should be grateful of your valued opinion on the correctness of the clerk's view. SEVA.

Answer.

We agree with the learned clerk. It is the whole order which is unenforceable while the parties reside together, and it is the whole

order which ceases to have effect on the resumption of cohabitation. Although the costs awarded were intended to enable the wife to pay her solicitor and her witnesses, they were awarded to the wife and cannot be enforced by anyone else, however unfortunate a position this may cause.

6.—Landlord and Tenant—*Letting after voluntary or compulsory acquisition—Recovery of possession.*

The council have acquired under the Education Act, 1944, and taken possession of, a dwellinghouse and curtilage. Although a compulsory purchase order was obtained, notice to treat was never served and the property was acquired by agreement with vacant possession. It is ultimately intended to demolish the dwellinghouse and to build a school on the land left vacant. The council are not yet ready to proceed with the building of the school and desire in the meantime to lease the existing property to a person in their employ so as to derive income therefrom until they are in a position to proceed with the proposed development. It is desired to grant a lease for a term of five years, subject to earlier determination in specified events, at a rent in excess of the rateable value. The nature of the property and the amount of the proposed rent are such that the Rent and Mortgage Interest Restrictions Acts will apply to the property whilst let, to bring it within the provisions of new control, with the result that at the expiration of the term the council will not be able to recover possession thereof except on the grounds specified in the Acts which will entail provision of alternative accommodation, which the council are not prepared to do. The town clerk is aware that this difficulty can be overcome by securing the transfer of the property to the housing revenue account under the provisions of s. 128 (*d*) of the Housing Act, 1936.

Section 91 of the Land Clauses Consolidation Act, 1945, however, provides " If in any case in which . . . the promoters of the undertaking are authorized to enter upon and take possession of any lands required for the purpose of the undertaking, the owner or occupier of any such lands or any other person refuses to give up possession thereof or hinders the promoters from entering upon or taking possession of the same it shall be lawful for the undertakers to issue their warrant to the sheriff to deliver possession of the same to the person named in the warrant "—and the sheriff shall deliver possession.

Your opinion is sought as to :

1. Whether, in view of the fact that the council have not yet implemented the provisions of their compulsory purchase order, they may take advantage of the provisions of s. 91 to recover possession of the property from a lessee in occupation pursuant to their own grant who refuses to surrender possession on the ground that he is protected by the provisions of the Rent Acts ?

2. If not, whether any other means (other than s. 128 (*d*) of the Housing Act, 1936, *supra*) exist whereby the council can lease this property and avoid the consequences of the Rent Acts as to recovery of possession. PALLA.

Answer.

1. Section 91 of the Lands Clauses Act, 1845, is available to the acquiring authority in relation to lands and interests acquired under the Education Acts and the Act of 1845. When possession has been obtained by that authority and it has itself created a new interest by a further letting, the new interest must be terminated without reference to s. 91, *i.e.*, by compulsory purchase, by agreement, or as provided by the Rent Restrictions Acts.

2. No.

7.—Licensing—*Special removal—Whether power to attach conditions limiting scope of licence.*

An application for the special removal of a full on and off justices' licence is being made to unlicensed premises, under s. 24 (2) (*a*) of the Act of 1910.

Can the justices authorize a special removal with conditions so as to make it practically what is popularly known as a " table licence," that is to say, consumption on the premises only and only with meals ? NOLL.

Answer.

No. The general power to impose conditions in limitation of the " full " scope of the licence is contained in s. 14 of the Licensing (Consolidation) Act, 1910, and is a special provision relating to the grant of a new justices' on-licence, not to the removal of an existing licence from one premises to other premises.

8.—National Assistance—*Removal order under s. 47 of National Assistance Act, 1948, as amended by National Assistance (Amendment) Act, 1951.*

I would like to query your answer to P.P. 9 at 116 J.P.N. 222. While agreeing that the point is far from free of doubt I would suggest that the correct interpretation is that what might be called a " council's order " under the original 1948 Act may be renewed as often as necessary for periods each not exceeding three months and a " medical officer's " order can be made once for up to three weeks but cannot be extended except by a " council's order."

The matter turns on the draftsman's use, in subs. (4) in the 1948 Act, of " such further period " instead of " such further periods." Had the latter been used I might have agreed with your interpretation but I suggest that " period " is in the singular to agree with " order " : that each order " from time to time " made may be extended by a period not exceeding three months. The opposite view would mean holding that the power is to make an order extending the detention generally (with a restriction added that the power expires when three months have passed). Obviously the order would have to specify a period but the draftsman's previous provision in the same subsection is to say the order is to mention a period.

Putting it another way, you say that " for such further period not exceeding three months " relates to the length of time that " the court may " : I say that it relates to the " order " extending the detention which the court makes from time to time. I say it because " for any period not exceeding three months," being a parallel provision, is a good guide and that relates, quite obviously, to the order first authorizing the detention.

The second part of my contention, *i.e.*, that there can be only one three weeks order is based on the repetition of " such " in each subsection in the 1951 Act, and the such quite obviously refers to the case where an application is supported by a medical officer's certificate that it is necessary to " remove " (not " detain ") without delay.

I am aware that what " ought to be " is of little value in the construction of a Statute but it is worth nothing that the type of person in respect of whom an order may be made is one who is not likely to improve : it is the chronic sick, or the aged. There must be periodic review by the court because the liberty of the subject is involved but it would be cruel to let someone unable to devote proper care and attention to themselves return to where they are not able to get it from others and leave them there until time makes their surroundings insanitary again, when as you suggest the authority starts *de novo* the process to be repeated *ad infinitum*. SAGE.

Answer.

This is certainly a reasonable construction of these somewhat difficult provisions, and after considering it carefully, we are prepared to accept our learned correspondent's interpretation especially as it seems to carry out the intention of the legislature better than any other interpretation.

9.—Pet Animals Act, 1951.—*Definition of shop.*

Two applications have been submitted to my authority under the Pet Animals Act, 1951, to breed and sell budgerigars. One applicant lives in a council house and has a small aviary at the bottom of his garden, where the birds are kept. The other applicant has a house and shop (a small general business) and breeds the birds in an outhouse at the rear of the house.

I am doubtful whether the Act was intended to apply to such cases, but I cannot find any provision in the Act which would avoid the necessity of registration. Under s. 7 (1) the keeping of a pet shop means the carrying on at premises of any nature (including a private dwelling) of a business of selling animals as pets, and the keeping of animals in any such premises as aforesaid with a view to their being sold in the course of such a business. Both applicants breed these birds as a pastime (although they sell the offspring) and it might be argued that they are not carrying on a business. This argument appears weak.

Part (*a*) of the proviso to that section says that a person shall not be deemed to keep a pet shop by reason only of his keeping or selling (1) pedigree animals bred by him or (2) the offspring of an animal kept by him as a pet. Pedigree animal means an animal of any description which is by its breeding eligible for registration with a recognized club or society keeping a register of animals of that description. I do not know of any such register club or society relating to budgerigars. In any case the two present applications are not in respect of pedigree birds.

It may be, however, that the second part of the proviso would apply, *i.e.*, " selling . . . the offspring of an animal kept by him as a pet." The word " animal " is here used in the singular whilst just previously the words " pedigree animals " are used.

On the face of it, it appears that a person could keep more pedigree animals than one and breed for sale without registration but, in the case of non-pedigree animals, only one breeding animal can be kept as a pet and the offspring be sold. Apparently in the latter case the person is not looked upon as carrying on a business. What is the position, however, where several breeding non-pedigree animals are kept as pets ? Is it a question of degree ?

It may be that under the Interpretation Act, 1889, the word animal can be construed either in the singular or plural sense, but personally I think the context precludes a plural construction.

Part (*b*) of the proviso to s. 7 (1) does not appear to help as it relates to " a business of breeding pedigree animals."

I understand that one journal dealing with birds has expressed an opinion that registration is not required in cases such as the two mentioned, but I have not seen that opinion.

I should be grateful for your opinion on these applications. PENT.

Answer.

We do not think that a licence is required in either of the two cases mentioned, and the plural construction is applicable. Otherwise sales of unwanted puppies would give exemption, but if a cat were also kept and kittens were sold, registration might be required. The true test is whether the animals are kept as pets or as a business, which may be a part-time business. In the case of small birds (which are often kept in large numbers in aviaries) it may be difficult to say when the keeping of the pets has become a business. One test would be whether the surplus offspring are sold (profitably or not), or are given away, and a better test would be whether other birds were being purchased regularly to replace those sold.

10.—Road Traffic Acts—*Driving licence—Boy of sixteen—Licence to drive a tractor obtained for him on application made by his employer—Offence by boy?*

A, aged about sixteen, applies for a licence to drive a tractor. He is informed he cannot have one until he is seventeen years of age. A then asks why B who is the same age as himself has this licence. Inquiries are made when it is found that B, who is 16½ years, has this licence. No one has seen B drive a tractor, so he cannot be charged with driving one while under age. B admits he has this licence but says he did not fill in the application form and never saw it: he says the form was filled in and signed on his behalf by his employer, C.

On being interviewed by the police, C admits he filled in and signed the form on B's behalf. This is borne out by the signature of B on the application form being quite different to the signature of B on the licence. In this form B's age was given as eighteen years and one month. C will be prosecuted for obtaining the licence on B's behalf under s. 112 (2) of the Road Traffic Act, 1930, but of what offence is B guilty?

(1) B says he never saw the form of application, and

(2) B was never seen to drive a tractor, but

(3) B knew he had the licence because he signed it.

(4) It is expected B will deny he asked C to get him this licence, and quite likely it was done for C's convenience, but he knew what C was doing and accepted the licence.

Can B be charged with (*a*) the original offence, (*b*) as accessory, or (*c*) with permitting?

If he can be charged at all, though a " young person " it is presumed he can be tried along with C in the adult court. J. SILEX.

Answer.

We do not think that B has committed any offence under s. 112 (2) when the basis of the offence is " knowingly making a false statement."

We think that as B is by s. 9 (5) of the 1930 Act disqualified under the provisions of Part I of that Act for holding or obtaining such a licence he has committed an offence under s. 7 (4) of that Act in that he has, through C, obtained this licence. This is evidenced by his possession of it and signature on it.

We think C has aided and abetted B in the commission of this offence. By the Children and Young Persons Act, 1933, s. 46 (1) (*b*) B can be tried in the adult court.

11.—Road Traffic Acts—*Removal of disqualification—Road Traffic Act, 1930, s. 7 (3)—Restriction to allow driving of certain vehicles.*

We shall be obliged by your opinion on the following point. Our client was involved in an accident some seven months ago and was subsequently prosecuted for driving an uninsured motor cycle. He pleaded guilty and was fined and disqualified for twelve months. In view of the fact that he was seriously injured in the accident and was not expected to be in a position to drive again for at least twelve months, no application was made at the time to the magistrates to limit the disqualification to any particular class of vehicle. In the events which have happened he has now recovered and is following his former occupation of a farmhand. He now wishes to drive a tractor again and the question arises have the justices power at this point to amend or lift the disqualification to the extent of allowing him to drive a tractor. There is ample authority to show that they could have so limited the disqualification in the first place but we can find no authority to show that once having made a general disqualification they can amend it. We appreciate of course that they could lift the disqualification altogether but we are not of the opinion that they would do so in this case. JUM.

Answer.

In our view, on an application under s. 7 (3) the court must either remove the disqualification entirely or refuse the application. It cannot modify the disqualification in the way suggested.

12.—Road Traffic Acts—*Speed indicators—Accuracy—*1951 *Construction and Use Regulations, regs.* 12 *and* 73*—Speed at which tests should be carried out.*

My colleagues and I have been discussing reg. 12 (1) of the Motor Vehicles (Construction and Use) Regulation, 1951, on a case we have before us and I shall be obliged for your opinion on the following:

A is the driver of a motor car which is hired from B. The car is a 1946 model. A is reported for exceeding the speed limit in a built-up area and replies " My speedometer is not accurate." With his consent the police test his speedometer at thirty miles per hour and find that the speedometer registered between forty and fifty miles per hour, the needle wavering.

A is reported for using the car with the instrument for indicating speed provided in compliance with the requirement of reg. 12 which had not been maintained in good working order, and B for permitting the car to be used.

Both were reported under regs. 73 and 101. The defect did not take place during the journey and no steps had been taken to have the defect remedied.

Attention is drawn to that part of reg. 12 which says that the instrument " Shall at all times readily indicate to the driver of the vehicle within a margin of plus or minus ten per cent. if and when he is driving at a speed in excess of that specified."

1. Having regard to the words, all times, is it to be assumed that this offence can be committed at whatever speed the car was being driven?

2. Must the speedometer be tested at a speed in excess of the prescribed limit? JEE.

Answer.

1. If the speedometer is inaccurate at the crucial speed it does not matter at what speed it was being driven when the offence is detected.

2. The offence is complete if the speedometer fails to indicate within the required limits of accuracy when the speed specified in reg. 12 (2) is being exceeded. We think it is not strictly relevant whether it is accurate or inaccurate at higher or lower speeds, although it might be urged in mitigation or aggravation as showing that the instrument was only slightly, or, as the case might be, grossly inaccurate.

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